STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE COURT OF APPEALS)

ROBERT MARTIN and CATHY MARTIN,

Plaintiffs-Appellees,

v

S.C. No. 120932
C.A. No: 222960
L.C. No: 98 007800 CH

JOHN R. REDMOND and BARBARA E. REDMOND, EDWARD DAVIES and KAREN A. DAVIES, SAMUEL D. BRANDT and LOIS A. BRANDT,

Defendants-Appellants,

and

DAVID A. BELDEAN and LISA A. BELDEAN, JEFFREY M. WOOLLARD and LYNNE M. WOOLLARD, CAROL ANN ROOTA, TERRY M. WEIR and CHRISTINE M. WEIR, JAMES R. STEFFAN and KATHRYN E. STEFFAN, ROGER D. HALL and LOIS HALL, a/k/a LOIS A. HALL, and ERSA M. HALL, ROBERT P. CRAFT and LINDA M. CRAFT, DAVID A. KAMULSKI, ROBERT O. PLATZ and SANDRA PLATZ, DONALD E. NELSON and SHIRLEY M. NELSON, JOHN E. KARGETTA and JANET B. KARGETTA, PETER R. CAVAN, and KATHY A. DEGASPERIS, BARTON J. HODGE and SUZAN K. HODGE, WILLIAM E. STANISCI and TERESA M. STANISCI, DON M. PROCTOR, Trustee, MILTON R. BRITTAIN and KATHLEEN M. BRITTAIN, EDNA M. SMITH,

Defendants.
_____/

PLAINTIFFS-APPELLEES, ROBERT MARTIN AND CATHY MARTIN'S
BRIEF ON APPEAL

REQUEST FOR ORAL ARGUMENT

CERTIFICATE OF SERVICE

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COUNTER-STATEMENT OF APPELLATE JURISDICTION

Plaintiffs-appellees accept the Statement of Basis of Jurisdiction as set forth in Defendants-Appellants' Brief dated May 19, 2003.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

I.

WHETHER THE COURT OF APPEALS PROPERLY DETERMINED THAT THE RESERVATION OF OUTLOT A WAS A PRIVATE RESERVATION, NOT A PUBLIC DEDICATION, AND THAT PRIVATE RESERVATIONS GIVE RISE TO RIGHTS OF USE – NOT OWNERSHIP RIGHTS?

Plaintiffs-appellees answer "yes."

Defendants-appellants answer "no."

The Court of Appeals answered "yes."

II.

WHETHER THE GRANT OF SUMMARY DISPOSITION IN FAVOR OF THE PLAINTIFFS CAN BE SUPPORTED ON THE ALTERNATIVE GROUND THAT EVEN IF THE RESERVATION DID APPLY AT ONE TIME TO ANY PORTION OF OUTLOT A, THE RESERVATION EXPIRED, PURSUANT TO PARAGRAPH 17 OF THE RESTRICTIONS, 25 YEARS FROM THE DATE OF RECORDING WHICH WAS NOVEMBER 26, 1969.?

Plaintiffs-appellees answer "yes."

Defendants-appellants answer "no."

The Court of Appeals answered "yes."

III.

WHETHER THE COURT OF APPEALS CORRECTLY RECOGNIZED THAT THE GRANT OF SUMMARY DISPOSITION IN FAVOR OF THE PLAINTIFFS COULD HAVE BEEN AFFIRMED ON THE GROUND THAT THE PLAINTIFFS OWN AND HAVE THE EXCLUSIVE RIGHT TO USE THE DISPUTED PORTION OF OUTLOT A PURSUANT TO THE DOCTRINES OF LACHES AND ESTOPPEL?

Plaintiffs-appellees answer "yes."

Defendants-appellants answer "no."

The Court of Appeals answered "yes."

COUNTER-STATEMENT OF FACTS

A. Introduction.

A ". . . statement of facts is not a vehicle for argument." *Markowitz & Co v Toledo Metropolitan Housing Authority,* 608 F2d 699, 704 (6th Cir 1979). ". . . [W]here issues of historical fact are bitterly contested, the parties are free to explain their version of events to the Court, as long as it is clear that it is just their version, and as long as both the findings of the trial court and their opponent's position are also accurately and fairly presented." *Markowitz, supra* at p 704 (underlining supplied).

It is clear that counsel for defendants-appellants is either unaware of her obligation to distinguish between disputed and undisputed facts or, if aware of that duty, has chosen to ignore it.

As an example to illustrate this point, plaintiffs direct this Court's attention to pages 3 and 4 of Defendants' Brief where they say:

> "Consequently, this portion of Outlot A has consistently been used as a boat launch for the neighborhood."
>
> * * *
>
> "There were never any physical signs of any claim of ownership of Outlot A, by any of Lot 21's owners." Defendants' Brief dated May 19, 2003, pp 3-4.

To read Defendants' Brief would lead one to the conclusion that these "facts" were and are so. Nothing could be further from the truth.

In order to conclude as much, one need do no more than refer to the Court of Appeals' October 26, 2001 Decision in this matter where it stated:

> "However, fairness compels us to observe that, for nearly thirty years, defendants never challenged the numerous private sales of the disputed portion of Outlot A, did not assert their purported rights when prior owners posted "No Trespassing" signs, and defendants failed to come forward with evidence that other lot owners actually used the disputed portion of the property." *Martin v Redmond,* 248 Mich App 59, 72-73; 638 NW2d 142 (2001).

Defendants do not explain in their Brief how they square their above-quoted statements with the actual facts as set forth by the Court of Appeals. This is for good reason. They cannot.

This example shows that defendants' representation of the historical facts is nothing more than their version, not, in any sense, a representation of undisputed facts. Plaintiffs bring this inaccuracy to the Court's attention in order that the Court will recognize that, in considering the Defendants' Brief, it must distinguish fact from fiction. In order to assist the Court in that task, plaintiffs offer the following recitation of facts.

B. <u>Factual background</u>.

On October 25, 1996, the plaintiffs purchased Lot 21 and an adjacent portion of Outlot A in the Tan Lake Shores Subdivision. (Appellees' Appendix pp 1b-3b).[1] The plaintiffs' property is located near the end of a cul de sac. The disputed portion of Outlot

[1] All documents referred to in this brief were submitted to the circuit court as Exhibits to plaintiffs' motion for summary disposition, plaintiffs' response to defendants' motion for summary disposition or plaintiffs' reply to defendants' response to plaintiffs' motion for summary disposition.

A[2] had been conveyed in tandem with Lot 21 for more than 32 years both before and after the platting of the Tan Lake Shores Subdivision.[3] (Appellees' Appendix pp 4b-14b). The disputed portion of Outlot A has been taxed as a distinct parcel separately from the remainder of Outlot A. Plaintiffs and their predecessors in title have paid taxes and insurance upon the disputed portion of Outlot A[4] for those 32 years and have maintained the property. (Appellees' Appendix pp 15b-19b).

The instant dispute arose after plaintiffs' purchase of Lot 21 and the adjacent portion of Outlot A in 1996 when they sought a building permit for the house which they proposed to build on Lot 21 and on the portion of Outlot A which they had purchased. At that time, they first learned the following facts.

In November, 1969, Jarl Corporation the developer of the Tan Lake Shores Subdivision, filed the plat for the subdivision. (Appellees' Appendix pp 20b-21b). Contemporaneously, the developer prepared and filed certain Restrictions. (Appellees' Appendix pp 22b-27b).

The plat document contained a dedication of the subdivision streets to the public, a

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[2] The disputed portion of Outlot A adjacent to Lot 21 is approximately one-third the size of the entire Outlot.

[3] The disputed portion of Outlot A was specifically excluded from the conveyance to the main developer, the Jarl Corporation. (Appellees' Appendix p 28b).

[4] No one paid the taxes imposed on the remainder of Outlot A and, as a consequence, the remainder of Outlot A was deeded to the Department of Natural Resources, Real Estate Division, by the Department of Treasury.

designation of easements that were not dedicated to the public and a reservation of Outlot A to the use of the lot owners. The specific language at issue in this case provided:

> "Outlot A is reserved for the use of the lot owners." (Underlining supplied).

Contemporaneously with the filing of the plat document, the developer also recorded certain restrictions. ¶ 17 of the Restrictions provided that:

> "All the restrictions, conditions, covenants, charges, easements, agreements and rights herein contained shall continue for a period of 25 years from date of recording this instrument."

C. Circuit court proceedings.

Upon learning the foregoing, plaintiffs commenced this suit in the Oakland County Circuit Court seeking a determination that they owned the disputed portion of Outlot A free and clear of any claims of the other owners of lots in the Tan Lake Shores Subdivision. The parties filed cross-motions for summary disposition. Plaintiffs contended that they were entitled to summary disposition on the grounds that (1) the asserted dedication of the disputed portion of Outlot A was withdrawn and was never accepted, (2) the reservation of Outlot A expired, pursuant to Restriction ¶ 17, 25 years after 1969, *i.e.,* in 1994 and (3) any assumed right the defendants had to enforce the reservation with respect to the disputed portion of Outlot A was lost by the doctrine of laches and estoppel.

The cross-motions for summary disposition were heard on July 28, 1999. The foregoing facts were recited by counsel for the parties in the course of their arguments. An additional fact presented to the circuit court judge was that while the plaintiffs, and their predecessors in title, had been paying the taxes on the disputed portion of Outlot A, no one had paid any taxes on the remaining two-thirds portion of Outlot A and as a result, that portion had reverted to the State of Michigan pursuant to a tax sale. Tr, 7/28/99, p 18. The cross-motions for summary disposition were taken under advisement. Tr, 7/28/99, pp 18-19.

On September 24, 1999, the lower court issued its Opinion and Order granting plaintiffs' motion for summary disposition and denying that of the defendants. The lower court addressed, first, the plaintiffs' assertion that the reservation of Outlot A set forth in the plat document expired 25 years after the plat was recorded. While the circuit court determined that paragraph 19 of the restrictions did not apply because that paragraph ". . . was in the future tense and did not incorporate existing, dedicated outlots," the circuit court did not decide the issue of the applicability of the 25-year term of the reservation as set forth in Paragraph 17 of the Restrictions.

The circuit court, however, did determine that ". . . the plaintiffs have the exclusive right to the portion of Outlot A due to laches or the doctrine of estoppel." The circuit court noted that the disputed portion of Outlot A was "part and parcel" of Lot 21. The circuit court noted that ". . . the plaintiffs' portion of Outlot A has been conveyed on a number of occasions with Lot 21 both before and after the platting of the subdivision." The circuit court noted that ". . . the plaintiffs' portion of Outlot A has been taxed and

insured separately from the remainder of Outlot A." As a result, the circuit court concluded that ". . . certainly, the portion of Outlot A that is in dispute has been conveyed and used inconsistent with public ownership." Opinion and Order dated September 24, 1999, p 2.

On October 11, 1999, the circuit court entered its order which provides that the language contained in the Plat of Tan Lake Shores Subdivision, to wit: "Outlot A is reserved for the use of the lot owners" was inapplicable to the portion of Outlot A in question and that the plaintiffs, the owners of Lot 21, ". . . shall hereinafter have the exclusive right and use of the portion of Outlot A . . . ." Defendants' claim of appeal followed on October 14, 1999. Plaintiffs cross appealed.

D. <u>The Court of Appeals decision</u>.

On October 26, 2001, the Court of Appeals issued its Opinion affirming the circuit court's grant of plaintiffs' motion for summary disposition. *Martin v Redmond, supra.* The Court of Appeals' October 26, 2001 Opinion can be summarized as follows:

> a. Statutory public dedications give rise to <u>ownership</u> rights. Only public dedications exist under the platting and subdivision statutes;
>
> b. There can be no private dedications under MCLA 560.253 or its predecessor statutes which give rise to <u>ownership</u> rights in owners of lots in platted subdivisions;
>
> c. A "dedication" is different from other forms of conveyance such as grants, gifts or easements;
>
> d. An intent to dedicate property in a platted subdivision to the public, even if the public dedication is not valid, does give rise to certain rights on behalf of property owners within the

plat. Those rights, however, are not ownership rights. They are rights of use "in the nature of private rights founded upon a grant or covenant . . ." Slip Opinion, p 7;

e. A reservation of property for the use of lot owners does not give rise to ownership rights. It gives rise to rights of use of the property;

f. Such private contractual rights of use are subject to the terms of the documents which create them;

g. The private contractual rights of use which the defendants acquired in this case expired, according to the terms of the documents which created them, 25 years after their creation;

h. Even though resort to equitable principles was not necessary in light of the conclusion that plaintiffs prevail as a matter of law, ". . . based on the continuous and unchallenged chain of title to the disputed portion of the Outlot, and the lack of evidence showing that the disputed portion was used in the manner for which it was intended, the reservation or restrictive covenant rendered little value to defendants and its intended purpose has failed." Therefore, the reservation was not enforceable;

i. Defendant's claim of ownership of the disputed portion of Outlot A was logically incompatible with their actions regarding the remainder of the lot and it was utterly disingenuous for defendants to claim the ownership of the disputed portion of Outlot A.

Defendants' subsequent motion for rehearing was denied by the Court of Appeals on January 14, 2002. Leave was granted by this Court on March 25, 2003.

Additional facts relevant to the issues raised on appeal will be set forth in the respective argument sections of the Brief.

COUNTER-STATEMENT OF THE STANDARD OF REVIEW

Appellate review of a motion for summary disposition is *de novo.* The Court must review the record to determine whether the moving party is entitled to judgment as a matter of law. *Adkins v Thomas Solvent Co,* 440 Mich 293, 302; 487 NW2d 715 (1992). The Court reviews questions of law *de novo. Cardinal Mooney High School v Michigan High School Athletic Ass'n,* 437 Mich 75, 80; 467 NW2d 21 (1991).

INTRODUCTION TO ARGUMENTS

Plaintiffs sought summary disposition on three separate bases. They claimed that they have the exclusive right to the disputed portion of Outlot A pursuant to the doctrines of latches and estoppel. They claimed that the asserted dedication of Outlot A could only have been a public dedication and that defendants failed and were unable to establish that the asserted dedication had ever been accepted. As a consequence, defendants acquired only a right to use Outlot A. They claimed that even if the reservation did apply at one time to any portion of Outlot A, the reservation expired, pursuant to paragraph 17 of the restrictions, 25 years from the date of recording which was November 26, 1969.

Summary disposition was granted in the circuit court on the ground that the doctrines of laches and estoppel barred defendants' claims to the use or ownership of plaintiffs' portion of Outlot A. The circuit court judge did not address the alternative bases on which summary disposition had been sought. Defendants, in their appellate brief, failed to properly present an argument challenging the grant of summary disposition based on the doctrines of laches and estoppel by failing to raise it in their statement of questions presented. *Martin v Redmond, supra* at p 64, n5. Plaintiffs, in their appellate brief, argued that summary disposition was proper on the bases upon which it had been granted in the circuit court as well as on the two alternative bases which were not addressed by the circuit court judge. The Court of Appeals opted to affirm the grant of summary disposition on bases other than that relied on by the circuit court judge. Having done so, the Court of Appeals nonetheless opined that if it were to

apply "equitable principles," as had the circuit court judge, summary disposition was proper under those circumstances. *Martin, supra* at pp 72-74.

In this Brief, plaintiffs will demonstrate that the grant of summary disposition was proper both for the reasons articulated by the circuit court judge as well as by the Court of Appeals.

ARGUMENT I

THE COURT OF APPEALS PROPERLY DETERMINED THAT THE RESERVATION OF OUTLOT A WAS A PRIVATE RESERVATION, NOT A PUBLIC DEDICATION, AND THAT PRIVATE RESERVATIONS GIVE RISE TO RIGHTS OF USE – NOT OWNERSHIP RIGHTS.

A. Analysis.

At the outset of the analysis, it is necessary to dispel the incorrect notion of what the Court of Appeals determined in this case, since the appellants, the Attorney General, and the Court of Appeals in the companion case of *Little v Hirschman* are laboring under the same incorrect notion. They all believe that the Court of Appeals in this case held that a "dedication" (actually a reservation) to private individuals is wholly invalid and does not give rise to any rights whatsoever. They are wrong. The Court of Appeals held that while a "dedication" (actually a reservation) to private individuals does not give rise to ownership rights, it may give rise to rights of use of the property in question.[5] So, the focus of the inquiry on appeal is not whether the defendants in this case and homeowners in other cases can acquire any rights under a reservation of property for the use of lot owners, the focus is on the nature of the rights so acquired. Plaintiffs contend that the Court of Appeals properly determined that the nature of the right so acquired is a right of use and not a right of ownership.

[5] It then determined that the right of use acquired by the defendants as a result of the reservation of Outlot A for the use of the lot owners had expired and/or was lost.

Defendants' entire case is based on the premise that this case involves a dedication. It does not. It involves a reservation of property for the use of lot owners. Everyone is aware of the admonition against comparing apples with oranges. That is because they are different. The same holds true for dedications and reservations.[6] Although the reservation in this case was contained in a paragraph entitled "dedication," that does not transform it into a dedication. By way of example, placing an orange into an apple crate does not make it an apple. It is still an orange. The reservation in this case is just that, a reservation. The question presented is, what rights did the lot owners acquire by virtue of that reservation. The answer is that they acquired rights of use – not rights of ownership.

A recent decision of the Court of Appeals, *Steiger v Sass,* Docket No. 238252, *rel'd* March 13, 2003[7] sets forth a correct analysis to be applied in the present case. There, the plat of the Ottawa Hills Subdivision provided in relevant part that "Parks 'A' and 'B' are dedicated to the use of the lot owners." The Court of Appeals held that such language did not transfer ownership of the Parks to the lot owners. The Court of Appeals stated:

> "We recognize that the "intent of the plattors should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant." *Dobie [v Morrison,* 227 Mich App 536; 575 NW2d 817 (1998)], 227 Mich App 540. The language here from the

[6] The Court of Appeals recognized this point when it noted that prior cases had used the term "dedication" loosely to describe other things. *Martin v Redmond, supra* at p 69.

[7] A copy of *Steiger* is attached pursuant to MCR 7.215.

> Proprietor's Certificate states, "Parks 'A' and 'B' are dedicated to the *use* of the lot owners." (Emphasis added.) Undoubtedly, the language does not purport to transfer ownership of the parts to the lot owners, but rather a use. Plaintiffs [successors in interest to the plattors] have title to Parks A and B subject to the easement encumbrance placed upon the land by the Freels in the original "Proprietor's Certificate" dated June 12, 1970, because the right of use was never extinguished by the tax sale. Therefore, plaintiffs' rights stem from the quit claim deeds that were, of course, subject to the right of use dedicated to the lot owners. After thoroughly reviewing the record and the applicable law, we find the language used in the Proprietor's Certificate is more consistent with the grant of an easement than a grant of fee ownership rights.

In support of its conclusion, the Court of Appeals in *Steiger* relied on *Dobie v Morrison, supra,* which in turn relied on this Court's decision in *Thies v Howland,* 424 Mich 282; 380 NW2d 463 (1985). In *Thies, supra,* the question presented was whether a plat's dedication of a walk which ran along a lakeshore "to the joint use of all the owners of the plat . . ." was intended to convey a fee in the walk to all subdivision owners or merely grant them an easement along the lakeshore. This Court held: "The phrase 'joint use' standing alone does not ordinarily denote the passing of a fee interest in land." *Thies, supra* at p 293. The same conclusion obtained in *Dobie, supra.* There, the plattors of the subdivision dedicated a park to ". . . the use of the owners of lots in this plat which have no lake frontage." In affirming the circuit court's determination that the plattors retained their ownership in fee, the Court of Appeals concluded that ". . . the plattors intended that the park dedication convey merely an easement, not a fee in the park, to all backlot subdivision owners." The Court of Appeals reasoned:

> "The dedication provided that the park was dedicated to 'the use of the owners of lots in this plat which have no lake frontage.' . . ., but did not explicitly purport to transfer ownership of the park from plaintiffs' predecessors . . . to all the backlot owners. We find the language used to be more consistent with the grant of an easement rather than a grant of fee ownership rights." *Dobie, supra* at p 540.

The same conclusion obtains here, and for a stronger reason. Each of these cited cases involved a "dedication"[8] of property for the use of lot owners. Nonetheless, the appellate courts concluded that the subdivision lot owners did not acquire fee ownership rights. This case involves a reservation of property for the use of lot owners. If a "dedication" of property for the use of lot owners does not give rise to ownership rights, then surely a reservation of property for the use of lot owners does not give rise to ownership rights. Based on the foregoing, plaintiffs-appellees contend that the inquiry should end at this point and the grant of summary disposition in their favor should be affirmed. Nonetheless, plaintiffs will proceed to address the arguments advanced by the defendants.

The defendants claim ownership of Outlot A by statutory dedication pursuant to MCLA 560.253(1). They claim that ". . . all lot owners of Tan Lakes Subdivision thus received title in fee simple to all of Outlot A at the time the Plat was recorded." (Defendants' Brief dated 05/19/03, p 16). Although they "say" so, they cite no case in support of the assertion. That is so because none exists.

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[8] Remember, the term has been used loosely in the past. *See* footnote 6, *supra.*

The essence of a dedication is that it must be for the use of the public at large. While there may be a dedication of lands for special uses it must be for the benefit of the public and not for any particular part of it. *Krausharr v Bunny Run Realty Co,* 298 Mich 233; 298 NW 514 (1941). In *Krausharr, supra,* this Court stated:

> "Solely as individuals, these plaintiffs cannot assert any rights based upon the dedication and acceptance of the plat; but, instead, rights of that character must be asserted, if at all, as a right or use to which the public in general is entitled.
>
> "'There is no such thing as a dedication between the owner and individuals. The public must be a party to every dedication. In fact, the essence of a dedication to public uses is that it shall be for the use of the public at large. There may be a dedication of lands for special uses, but it must be for the benefit of the public, and not for any particular part of it; and if from the nature of the user it must be confined to a few individuals, * * * the idea of dedication is negatived.' 16 Am Jur, p 359." *Krausharr, supra* at pp 241-242.

See also West Michigan Park Ass'n v Department of Conservation, 2 Mich App 254, 267; 139 NW2d 758 (1966). In *Beulah Hoagland Appleton Qualified Personal Residents Trust v Emmet County Rd Comm'n,* 236 Mich App 546, 554; 600 NW2d 698 (1999) the Court of Appeals noted that a statutory dedication under the Land Division Act, MCLA 560.101 *et seq* (formerly known as the Subdivision Control Act of 1967), two elements are required: (1) a recorded plat designating the areas for public use evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and (2) acceptance by the proper public authority. A valid statutory public dedication vests fee in the public body. *Kalkaska v Shell Oil Co, (After Remand),* 433 Mich 348, 354; 446 NW2d 91 (1989).

Strictly speaking, there can be no dedication to private uses or to uses public in nature but the enjoyment of which is restricted to a limited part of the public. *Detroit Edison Co v City of Detroit,* 332 Mich 348; 51 NW2d 245 (1952); *Quinn v Pere Marquettery,* 256 Mich 143; 239 NW 376 (1931). In this case, defendants' theory is that they have rights to the disputed portion of Outlot A under a dedication theory. They do not since there can be no dedication to private uses.

Defendants argue that private dedications exist under the platting and subdivision statutes. Based on that argument they allege, in general fashion, error in the October 26, 2001 Court of Appeals' Opinion. Yet, the defendants do not really argue that a "private dedication" gives rise to ownership rights on behalf of property owners within the platted subdivision.[9] The claim of the defendants is only that the defendants did acquire certain "rights" in Outlot A. Those "rights" are rights to use property as evidenced by their citation to *Schurtz v Wescott,* 286 Mich 691; 282 NW 870 (1938), *Kirchen v Remenga,* 291 Mich 94; 288 NW 344 (1939) and *Feldman v Monroe Twp Board,* 51 Mich App 752; 260 NW2d 628 (1974), all of which recognize that a right to use property arises from the designation in a plat of property as a park or common area.[10]

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[9] To be accurate, plaintiffs note that defendants do, in cursory fashion, assert at page 16 of their Brief that they received title in fee simple to all of Outlot A at the time the Plat was recorded. The entire balance of their Brief, however, demonstrates that their real argument relates to the right of use and not ownership.

[10] "The sale of lots with reference to a plat in which areas are designated as parks passes to the purchasers of the lots a common right to use such areas for park purposes." *Kirchen v Remenga, supra* at p 104. (Underlining supplied).

That is exactly what the Court of Appeals determined in this case. It determined that the defendants acquired "a private, contractual right of use or an implied or restrictive covenant, reserving the use of Outlot A to subdivision lot owners." *Martin, supra* at pp 71-72. Defendants have not cited any authority which shows that the Court of Appeals' articulation of the extent of the rights acquired by them was incorrect. That is for good reason. None of the authorities cited by the defendants suggest that the determination of the extent of the rights acquired by the defendants was wrong. In other words, none of the authorities cited by the defendants stand for the proposition that the designation or reservation in a plat of property of a park or common area gives rise to ownership rights in the property.

In addition, to the extent that the attempted dedication of any portion of Outlot A can be deemed to have been an attempted public dedication, that dedication fails. Until there has been an acceptance, there can be no valid dedication, *Kraus v Department of Commerce,* 451 Mich 420; 547 NW2d 870 (1996) – construing MCLA 560.253(1); MSA 26.430(253)(1), Section 253(1) of the Subdivision Control Act; *Hawkins v Dillman,* 268 Mich 483; 256 NW 492 (1934), and until there is an acceptance no public rights can attach to the land offered for public use. *Rindone v Carey Community Church,* 335 Mich 311; 55 NW2d 854 (1953). The mere certification of a plat does not constitute acceptance of the dedicated property. *Eyde Bros Development Co v Roscommon County Bd of Road Comm'nrs,* 161 Mich App 654, 662-664; 411 NW2d 814 (1987). In the absence of an acceptance of land dedicated on recorded plats, there can be no dedication. *Salzer v Green,* 48 Mich App 34; 209 NW2d 849 (1973). An offer to dedicate land for

public use must be accepted within a reasonable time and an acceptance comes too late if made after the owner has taken any steps to withdraw the offer. *Shewchuck v City of Cheboygan,* 372 Mich 110; 125 NW2d 273 (1963); *Marx v Department of Commerce,* 220 Mich App 66; 558 NW2d 460 (1996).

Here, there was no acceptance of the assumed-for-argument-only dedication of the disputed portion of Outlot A by the other lot owners prior to the transfer by deed by James Fritch of Lot 21 and the disputed portion of Outlot A or prior to the subsequent transfers to plaintiffs' predecessors in title and ultimately to the plaintiffs. The initial post-1969 sale of the disputed portion of Outlot A by James Fritch constitutes a withdrawal of the offer prior to acceptance. *See Kraus, supra* at p 431. As such, even if defendants' response to this litigation in 1998 can be viewed as an attempt to accept the assumed offer to dedicate the disputed portion of Outlot A, that "acceptance" came too late. This fact provides an alternative basis upon which this Court may affirm the lower court's determination that the plaintiffs have the exclusive right to the disputed portion of Outlot A.

Defendants argue that the post-1969 initial conveyance by Mr. Fritch, and the subsequent conveyances by succeeding grantees, of the disputed portion of Outlot A in tandem with Lot 21 does not constitute a "withdrawal of the offer of dedication" because, according to them, ". . . this subsequent conveyance is not sufficient to establish an 'inconsistent use' of the property." Defendants' Brief dated May 19, 2003, p 17. This point needs but little reply. It is the post-1969 conveyances of the disputed portion of Outlot A in tandem with Lot 21, which constitute the withdrawal of the offer of

dedication. Although those conveyances do not establish an "inconsistent use" (whatever defendants mean by that phrase), those conveyances do constitute a withdrawal of the offer of dedication.

Defendants also argue that ". . . the dedication is still valid with regard to defendants' interests because the deeds to their properties were conveyed with reliance on the recorded plat . . . ." Defendants' Brief dated May 19, 2003, p 16. Defendants' legal argument has no factual support. There is no evidence in the record that any deed received by any defendant made any mention whatsoever of Outlot A, let alone any purported right to use Outlot A. In fact, at the July 28, 1999 Circuit Court hearing, counsel for the defendants stated:

> "The deeds that I have reviewed do not mention specifically the dedication of Outlot A or any other dedications." Tr, 7/28/99, p 18.

In addition, there is no other evidence in the record to show that any of the defendants relied on a claimed right to use Outlot A at the time they purchased their properties. Since the record is devoid of any evidence reliance by the defendants on the reservation concerning Outlot A at the time they purchased their properties, their citations to *Pulcifer v Bishop,* 246 Mich 579; 225 NW3 (1929) and *Rindone v Carey Community Church,* does not assist their position.

The last argument made by the defendants warrants comment. Their argument that "vacation" of the Plat was required is without merit. Such an argument presupposes that the dedication itself was initially valid as a public dedication. Yet the Court of

Appeals twice correctly noted that no acceptance of the assumed-for-argument-purposes "dedicated" property occurred. Since one does not have to seek to "vacate" something whose validity was never established and, thus, never came into existence, any suggestion that "vacation" was required finds no basis in law or logic.

In a similar vein defendants contend that the lower courts "modified" or "tinkered with" their asserted rights and contend that this is impermissible. The foundation underlying these contentions is lacking. The courts below simply determined the nature of the defendants' rights in the first instance. Defendants also assert that ". . . courts must be extremely cautious about changing the rights of land ownership granted in a plat." (Defendants' Brief, 05/19/03, p 20). Defendants may or may not be correct in that assertion but whether they are or are not is irrelevant. It is irrelevant because defendants never obtained any "rights of land ownership" in the disputed portion of Outlot A.

ARGUMENT II

THE GRANT OF SUMMARY DISPOSITION IN FAVOR OF THE PLAINTIFFS CAN BE SUPPORTED ON THE ALTERNATIVE GROUND THAT EVEN IF THE RESERVATION DID APPLY AT ONE TIME TO ANY PORTION OF OUTLOT A, THE RESERVATION EXPIRED, PURSUANT TO PARAGRAPH 17 OF THE RESTRICTIONS, 25 YEARS FROM THE DATE OF RECORDING WHICH WAS NOVEMBER 26, 1969.

A. Analysis.

Restrictive covenants are construed strictly against grantors and others claiming the right of enforcement. *Broeder v Sucher Brothers, Inc,* 331 Mich 323; 49 NW2d 314 (1951). All doubts are resolved in favor of the free use of property. *Moore v Kimball,* 291 Mich 455; 289 NW 213 (1939); *Wood v Blancke,* 304 Mich 283; 8 NW2d 67 (1943).

The circuit court judge correctly determined that the language of the Restrictions are unambiguous, Opinion and Order dated September 24, 1999, p 2, but then discussed only the inapplicability of Paragraph 19 of the Restrictions and failed to discuss the applicability of Paragraph 17. Had she done so, plaintiffs contend that she would have concluded (just as the Court of Appeals did) that Paragraph 17 is applicable and, therefore, the reservation of Outlot A to the use of the other lot owners expired 25 years after the Plat and Restrictions were filed together in 1969.

Restrictions on property are not enforceable after the restrictive period has expired. *Sampson v Kaufman,* 345 Mich 48; 75 NW2d 64 (1956); *Moore v Kimball, supra.* In *Sampson, supra,* this Court stated:

> "In *Moore v Kimball,* 291 Mich 455, the plaintiffs endeavored to sustain a reciprocal negative easement after a 25-year restriction period had expired. The Court in that case said (pp 461, 462):
>
> > "Upon a review of the record we are of the opinion that the restrictions were clear and unambiguous. They terminated upon expiration of the time provided for their duration. They cannot be enlarged beyond their plain language to encompass that which was not expressed; and they cannot be extended by evidence of what the parties intended by such restrictions; but are conclusive on the fact." * * *
> >
> > "From the foregoing, it is our conclusion that no claimed restriction is enforceable against defendant since the restrictive period has expired and no negative reciprocal easement runs against defendants' premises after such time." *Sampson, supra* at p 52.

The same conclusion obtains here. Paragraph 17 of the Restrictions states unambiguously that all ". . . restrictions, conditions, covenants, charges, easements, agreements and rights . . ." continued for a period of 25 years from 1969, *i.e.,* until 1994. Any right that the defendants had to use the disputed portion of Outlot A expired in 1994, well before the plaintiffs purchased the property. After expiration in 1994 the reservation could not be enforced against the premises and could not be enforced against the plaintiffs, the owners of Lot 21 and the adjacent disputed portion of Outlot A.

Defendants' argument is that Paragraph 17 of the Restrictions, imposing the 25-year time limit, does not apply to the reservation of Outlot A because the reservation is set forth in the plat and Paragraph 17 is set forth in the Restrictions which are separate

documents. Factual concessions in defendants' Court of Appeals Brief are fatal to this argument. Defendants conceded that the Restrictions ". . . were executed at the same time as the dedication." Defendants' Brief dated August 2, 2000, p 3; Defendants' Opening Brief dated March 31, 2000, p 3. Defendants also stated:

> "At the time the dedication of Outlot A was made, Restrictions were also drafted and recorded."

Defendants' Brief dated August 2, 2000, pp 4-5.[11] Moreover, the face page of the Restrictions refers expressly to the plat which was contemporaneously executed. Under these circumstances, the necessary and only conclusion is that the plat (containing the reservation concerning Outlot A) and the Restrictions (containing Paragraph 17 setting forth the 25-year time period) must be construed together.

In order to determine the intention of parties, separate instruments executed at the same time, in relation to the same matter and between the same parties and made as elements of one transaction, should be examined together and construed as one instrument. *Nogaj v Nogaj,* 352 Mich 223, 231; 89 NW2d 513 (1958); 23 Am Jur 2d

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[11] In fact, at the July 28, 1999 Circuit Court hearing, counsel for the defendants stated:

> There were three different documents that were drafted and signed and recorded on that date.
>
> * * *
>
> All three of these are separate and although inter-related documents.

Transcript, 7/28/99, p 8.

Deeds §172, p 218; 26 CJS *Deeds* §91, pp 840-841. *See also, West Madison Investment Co v Fileccia*, 58 Mich App 100, 106; 226 NW2d 857 (1975). Furthermore, where, as here, one writing references another instrument, the two writings should be read together. *Forge v Smith,* 458 Mich 198; 580 NW2d 876 (1998). Since the plat and the Restrictions were executed at the same time, since they relate to the same matter, since they were made as elements of one transaction and since the Restrictions refer to the plat, they are properly construed and interpreted together. Accordingly, the mere fact that Paragraph 17 of the Restrictions is set forth in a document separate from the plat containing the reservation of Outlot A is, legally speaking, irrelevant. The 25-year term set forth in Paragraph 17 of the Restrictions applies to the reservation of Outlot A. That reservation expired 25 years from 1969, *i.e.,* in 1994.

ARGUMENT III

THE TRIAL COURT PROPERLY GRANTED SUMMARY DISPOSITION IN FAVOR OF THE PLAINTIFFS ON THE GROUND THAT THE PLAINTIFFS OWN AND HAVE THE EXCLUSIVE RIGHT TO USE THE DISPUTED PORTION OF OUTLOT A PURSUANT TO THE DOCTRINES OF LACHES AND ESTOPPEL. THE COURT OF APPEALS CORRECTLY RECOGNIZED THAT THE GRANT OF SUMMARY DISPOSITION IN FAVOR OF THE PLAINTIFFS COULD HAVE BEEN AFFIRMED ON THIS BASIS.

"The right to enforce a restrictive covenant may be lost by waiver or acquiescence. This is so, for instance, where, by failing to act, one leads another to believe that he or she is not going to insist upon the covenant, and such other person is damaged thereby . . . It is contrary to equity and good conscience to enforce rights under restrictive building covenants where the defendant has been led to suppose by word, conduct or silence of the plaintiff that there are no objections to his or her operations." 20 Am Jur 2d, Covenants, Conditions and Restrictions, §239, pp 654-655 (footnotes omitted). An all-embracing rule cannot be laid down as to what constitutes waiver, laches or estoppel. Each case must stand on its own facts. *Dolecki v Perry,* 277 Mich 679, 270 NW 184 (1936).

In *Thill v Danna,* 240 Mich 595, 216 NW 406 (1927), plaintiffs stood by inactive, while defendants incurred expense in erecting a building which violated a housing code. It was held that plaintiffs were guilty of laches, and estopped to maintain a suit to enjoin completion of the building, on the principle that equity looks at the whole situation and

grants or withholds relief as good conscience dictates. *See also Hartwig v Grace Hospital,* 198 Mich 725, 165 NW 827 (1917). *Bigham v Winnick,* 288 Mich 620, 623; 286 NW 102 (1939). Plaintiffs contend that the circuit court properly applied these principles and correctly determined that any right the other lot owners in Tan Lake Shores Subdivision may have had to use the disputed portion of Outlot A[12] had been lost by non-use, waiver or acquiescence.

It is undisputed that both prior to and subsequent to the filing of the plat containing the language purporting to reserve the entire Outlot A to the use of the lot owners, the disputed portion of Outlot A was conveyed in tandem with Lot 21. As a consequence, the plaintiffs and their predecessors in title have paid a valuable consideration for the disputed portion of Outlot A. In fact, in 1997, the plaintiffs' portion of Outlot A was appraised for $87,000. (Appellees' Appendix pp 29b-30b). In addition to the fact that the disputed portion of Outlot A was held in separate and individual ownership prior and subsequent to the issuance of the plat, the owners of the disputed portion of Outlot A have done things to that portion of Outlot A that no one else in the subdivision has done. They have paid taxes and insurance on the property.

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[12] It cannot be overemphasized too strongly that no one has challenged the defendants' right to use the remaining two-thirds of Outlot A generally or specifically to gain access to Tan Lake. The land remains vacant and there is no suggestion that the Department of Natural Resources, since 1991 when it acquired the property, has prevented or intends to take any steps to prevent the lot owners in the Tan Lakes Subdivision from using the remaining two-thirds portion of Outlot A.

Moreover, plaintiffs' immediate predecessor in title, Anthony J. Pasko, stated by way of affidavit that when he purchased Lot 21 and the disputed portion of Outlot A in 1987, the disputed portion of Outlot A was covered with waist-high weeds and other growth and was being used as a dump site. (Appellees' Appendix pp 15b-16b). The Paskos cleared the garbage and refuse from the disputed portion of Outlot A, cut the weeds and regularly maintained it until they sold the property to the plaintiffs in 1996. More importantly, after the Paskos had cleared and had begun maintaining the disputed portion of Outlot A, they posted "no trespassing" signs on both Lot 21 and the on the disputed portion of Outlot A. There is no evidence that since 1987 when plaintiffs' predecessors cleared the disputed portion of Outlot A and put up the "no trespassing" signs that any of the defendants objected to the exclusive use of the disputed portion of Outlot A by the plaintiffs or their predecessor in title or made any claim whatsoever that that portion of Outlot A was reserved to the use of the other lot owners.[13] There is no

[13] To be sure, the affidavit of Samuel Brandt which defendants submitted to the circuit court says that since 1968 when he moved in many defendants had used "the outlot" to launch boats. Brandt Affidavit dated March 23, 1999, ¶ 2. Significantly, Mr. Brandt's affidavit never says that he or anyone else used the disputed one-third portion of Outlot A as opposed to the remaining two-thirds portion. In fact, at his deposition, Mr. Brandt admitted that he had never seen anyone launching boats off of either Lot 21 or the disputed portion of Outlot A, Deposition dated February 23, 1999, pp 27, 32, and he did not know if any persons who he had been told had launched boats had utilized the disputed portion of Outlot A. Deposition Tr, p 32.

Mr. Brandt also admitted, consistent with the affidavit of Mr. Pasko, that a "no-trespassing" sign had been posted on the disputed portion of Outlot A. Deposition Tr, p 30. Mr. Brandt also admitted that the other lot owners could use the remaining two-thirds portion of Outlot A for access to Tan Lake. Deposition Tr, p 25.

evidence that any of the other lot owners attempted to prevent the plaintiffs from, or for that matter even questioned them about, placing building stakes on the disputed portion of Outlot A or from grading it, filing it, placing land structures on it or landscaping it. In point of fact, the remaining lot owners only first expressed any interest in the disputed portion of Outlot A after this litigation was filed in 1998.

Under these circumstances, the necessary and only conclusion is that the circuit court judge properly applied the principles of equity, locked at the whole situation and correctly determined that plaintiffs', and their predecessors', actions with respect to the disputed portion of Outlot A, coupled with the defendants' lack thereof, warranted the conclusion that defendants were estopped (with respect to the disputed portion of Outlot A) to enforce the reservation set forth in the plat.

Before leaving this argument one last point must be made. Defendants should not be heard to assert that if they are not permitted to use the plaintiffs' portion of Outlot A, they have no access to the lake. All of the lots in the Tan Lake Shores Subdivision are waterfront lots and have lake access either directly or by way of a canal. Defendants admitted this at page 1 of their March 31, 2000 Court of Appeals' Brief.[14] There is no reason why the defendants cannot utilize the remaining two-thirds of Outlot A as lake access to Tan Lake.

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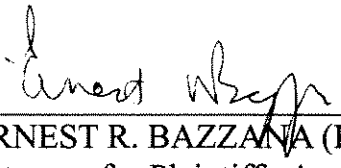
[14] "Most of the lots that are not on Tan Lake are on a canal, which connects to a series of lakes to Tan Lake."

CONCLUSION

Based on the foregoing analyses and citations to authority, plaintiffs-appellees, Robert Martin and Cathy Martin, contend that the grant of summary disposition in their favor and against the defendants was correct for the reason relied on by the trial judge and was correct for the reasons relied on by the Court of Appeals. Plaintiffs request that this Court issue its decision affirming the grant of summary disposition in favor of the plaintiffs.

PLUNKETT & COONEY, P.C.

By: 

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DATED: June 20, 2003

STATE OF MICHIGAN

COURT OF APPEALS

JOHN M. STEIGER, CAROL A. STEIGER, RONALD MARTELLO, CLAUDIA MARTELLO, and UMIT BILGE

Plaintiff-Appellants,

v

THOMAS W. SASS, WILLIAM WAGANFEALD, JERRY M. NEHR TRUST, SHARON A. NEHR TRUST, DENNIS E. DOUBECK, SANDRA DOUBECK, TAYLOR FAMILY TRUST, JOHN H. TAYLOR TRUSTEE, JOSEPH NOWAK, BEVERLY NOWAK, JIM and VICTORIA DAVIDSON, MARJORIE KAY BURDO, JUDITH K. METYKO, JOHN A. METYKO, COLIN P. FREEL, ESTHER FREEL, DALE POTTER, and WANDA POTTER,

Defendant-Appellees.

UNPUBLISHED
March 13, 2003

No. 238252
Presque Isle Circuit Court
LC No. 00-002406-CH

Before: Donofrio, P.J., and Saad and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants. We affirm in part, reverse in part, and remand the case to the trial court for a determination of the scope of the use of the easement to which the parks are subject.

This case arose when plaintiffs brought this action in an attempt to quiet title to two parcels of land known as Parks "A" and "B" ("the property"). The land at issue is located in the Ottawa Hills Subdivision in Presque Isle County. Plaintiffs are lot owners in the plat and claim title to the property pursuant to a tax deed from the Department of Treasury dated March 2, 1979. Plaintiffs are the successor purchasers to the purchasers at the tax sale. Defendants are also lot owners in the subdivision.

A chronological timeline is useful in determining the property rights of the parties in this case. In June 1970 a plat was prepared for the property and filed with the county register of deeds. The Freel family[1] owned the plat, consisting of almost nineteen acres, and divided it into thirty-four lots and two private parks labeled "A" and "B." The "Proprietor's Certificate" dated June 12, 1970 states as follows:

> We as proprietors certify that we caused the land embraced in this plat to be surveyed, divided, mapped and dedicated to the use of the public. Parks "A" and "B" are dedicated to the use of the lot owners. That the public utility easements are private easements and that all other easements are for the uses shown on the plat. Lots embracing any waters of Lake Nettie are subject to the correlative rights of other riparian owners and to the public trust in these waters. Waterfront lots extend to the waters edge.

Thereafter, the property owners began selling off the lots in the plat. Apparently, the tax assessor, post-dedication of Parks A and B to the lot owners, placed the parks upon the tax roll contrary to the established practice of spreading the assessed value of the dedicated parks pro rata among the lot owners, and held the plat proprietor responsible. Presumably they failed to pay the taxes causing foreclosure and the resultant tax sale.

The tax sale occurred in May 1977. At the sale, Mitchell Kamlay and Stephen Ura purchased the property. Seemingly, on August 31, 1977 the Freels quit claimed their interest in Park A to Mitchell and Mary Ann Kamlay, and Stephen and Estelle Ura. On the same day, the Freels quit claimed their interest in Park B to Robert and Anna Heise. The next relevant event was when the Michigan Department of Treasury issued a tax deed for both Parks A and B to Mitchell Kamlay and Stephen Ura on March 2, 1979. Thereafter there appears to be accommodating transfers between these parties that do not affect the outcome of this case. The tax deed was not recorded until May 20, 1991, and a return of service of notice of the sale has never been filed with the county treasurer.

Plaintiffs now claim that the rights of the lot owners have been extinguished by the tax deed dated March 2, 1979. Defendants counter arguing that plaintiffs cannot prove that the tax title was perfected as required by MCL 211.140(1) and therefore plaintiffs' claims are without merit. The trial court agreed with defendants finding that, "[t]hey then had five years to file a return of service of notice of the sale with the county treasurer. It has never been filed. Under MCL 211.73a as proper notice was not given, they are barred from asserting title or claiming a lien on the land by reason of a tax purchase."

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the trial court's order does not specify which subsection of MCR 2.116(C) that the trial court relied upon, it appears to us that the trial court relied on MCR 2.116(C)(10) because it considered factual evidence not in the pleadings. See *Gibbons v Caraway*, 455 Mich 314, 320, n 7; 565 NW2d 663

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[1] Virgil and Judy Freel, John and Gertrude Freel, and Ronald and Bertha Freel.

(1997). Furthermore, "[a]ctions to quiet title are equitable in nature and are reviewed de novo by this Court." *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998).

On appeal, plaintiffs first claim that defendants were not entitled to notice of the tax sale because they were not owners of the parks, or the last grantee or grantees in the chain of title of the property as described by MCL 211.140. We disagree.

MCL 211.140(1) clearly provides that:

> A writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale, except if title is obtained under section 131, shall not be issued until 6 months after the sheriff of the county where the property is located files a return of service with the county treasurer of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff made personal or substituted service of the notice on the following persons who were, as of the date the notice was delivered to the sheriff for service:
>
> (a) The last grantee or grantees in the regular chain of title of the property, *or of an interest in the property*, according to the records of the county register of deeds. [Emphasis added.]

It is undisputed that a return of service of notice of the tax sale has never been filed with the county treasurer and thus has not been perfected in accordance with MCL 211.140(1). Contrary to the assertions of plaintiff, application of MCL 211.140(1) provides that anyone having an interest in the party must be noticed. Therefore all persons entitled to notice were not noticed and the tax title upon which plaintiffs rely was not properly perfected and accordingly plaintiffs cannot claim any rights under the 1979 tax deed to defeat defendants' rights. MCL 211.73a.

Plaintiffs next argue that due to the tax sale, the state obtained absolute title extinguishing all easements and encumbrances. In support of their argument, plaintiffs cite MCL 211.67. However, our review of the statute reveals that MCL 211.67 is not applicable to the instant case. MCL 211.67 does not apply to the rights of a private purchaser following a tax sale. Instead, MCL 211.67 only applies when the state is bid in at a tax sale and obtains absolute title after proper perfection of the title. Therefore this argument also fails.

Lastly plaintiffs argue that the trial court erred when it sua sponte ruled that the lot owners within the plat hold title to Parks A and B under the original plat dedication. Specifically, plaintiffs contend that the trial court erred when it stated:

> IT IS HEREBY ORDERED that for the reasons stated in this Court's written Opinion that:
>
> 1. The owners of lots within the recorded plat of Ottawa Hills Subdivision (said plat being recorded at Liber 3 of Plats, Pages 64-65 Presque Isle Records) hold title to Parks A and B under the original plat dedication.

Defendants respond that it makes little practical difference if the thirty-four lot owners' individual interests are that of an easement or title because in both cases they would still be able to use the parks.

We recognize that the "intent of the plattors should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant." *Dobie, supra*, 227 Mich App 540. The language here from the Proprietor's Certificate states, "Parks 'A' and 'B' are dedicated to the *use* of the lot owners." (Emphasis added.) Undoubtedly, the language does not purport to transfer ownership of the parks to the lot owners, but rather a use. Plaintiffs have title to Parks A and B subject to the easement encumbrance placed upon the land by the Freels in the original "Proprietor's Certificate" dated June 12, 1970, because the right of use was never extinguished by the tax sale. Therefore, plaintiffs' rights stem from the quit claim deeds that were, of course, subject to the right of use dedicated to the lot owners. After thoroughly reviewing the record and the applicable law, we find the language used in the Proprietor's Certificate is more consistent with the grant of an easement than a grant of fee ownership rights. See *Id.* Accordingly, we find that the trial court erred when it ruled that the lot owners within the plat hold title to Parks A and B under the original plat dedication, and remand the case to the trial court for a determination on the scope of the use of the easement and other equitable relief.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens

STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE COURT OF APPEALS)

ROBERT MARTIN and CATHY MARTIN,

Plaintiffs-Appellees,

v

S.C. No. 120932
C.A. No: 222960
L.C. No: 98 007800 CH

JOHN R. REDMOND and BARBARA E. REDMOND, EDWARD DAVIES and KAREN A. DAVIES, SAMUEL D. BRANDT and LOIS A. BRANDT,

Defendants-Appellants,

and

DAVID A. BELDEAN and LISA A. BELDEAN, JEFFREY M. WOOLLARD and LYNNE M. WOOLLARD, CAROL ANN ROOTA, TERRY M. WEIR and CHRISTINE M. WEIR, JAMES R. STEFFAN and KATHRYN E. STEFFAN, ROGER D. HALL and LOIS HALL, a/k/a LOIS A. HALL, and ERSA M. HALL, ROBERT P. CRAFT and LINDA M. CRAFT, DAVID A. KAMULSKI, ROBERT O. PLATZ and SANDRA PLATZ, DONALD E. NELSON and SHIRLEY M. NELSON, JOHN E. KARGETTA and JANET B. KARGETTA, PETER R. CAVAN, and KATHY A. DEGASPERIS, BARTON J. HODGE and SUZAN K. HODGE, WILLIAM E. STANISCI and TERESA M. STANISCI, DON M. PROCTOR, Trustee, MILTON R. BRITTAIN and KATHLEEN M. BRITTAIN, EDNA M. SMITH,

Defendants.
_____/

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Ernest R. Bazzana, being first duly sworn, deposes and says that he is a Partner with the firm of Plunkett & Cooney, P.C., and that on the 20th day of June, 2003, he caused to be served two copies of Plaintiffs-Appellees, Robert Martin and Cathy Martin's Brief on Appeal, Request for Oral Argument, and Certificate of Service upon the following:

Christine A. Waid, Esq.
UAW-GM Legal Services Plan
Attorney for Defendants-Appellants
140 South Saginaw, Suite 700
Pontiac, MI 48342

James E. Riley, Esq.
Department of Attorney General
5th Floor South, Constitution Hall
525 West Allegan Street
Lansing, MI 48913

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the United States Mail.

Ernest R. Bazzana

Subscribed and sworn to before
me this 20th day of June, 2003.

Laura A. Baird, Notary Public
St. Clair County, Michigan
Acting in Wayne County, Michigan
My Commission expires: 01/15/2004

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